

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**CBS BROADCASTING, INC.
Employer**

and

**Case No. 26-UC-191
(formerly 2-UC-545)¹**

**WRITERS GUILD OF AMERICA, EAST,
INC., AFL-CIO, and WRITERS GUILD
OF AMERICA, WEST, INC.
Petitioner**

DECISION AND ORDER

Following the filing of a petition under Section 9(b) of the National Labor Relations Act, as amended, (the Act) a hearing was held before a hearing officer of the National Labor Relations Board (the Board).

The Board has delegated its authority in this proceeding to the undersigned. Based on the entire record² in this proceeding, I find that the Petitioner failed to reserve the right to file a unit clarification petition concerning the disputed positions.

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

¹ The General Counsel issued an Order Transferring Case from Region 2 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 2 and will continue as Case 2-UC-545 except that Region 26 will retain jurisdiction only with respect to issues relating to the substance of this Decision.

²The Employer and the Petitioner filed briefs, which have been duly considered.

³ The parties stipulated that CBS Broadcasting, Inc., hereinafter referred to as the Employer, is a New York corporation with its principal office and place of business in New York City, New York where it is engaged in diversified communications business. Within the past 12 months, the Employer has derived gross revenues in excess of \$100,000 and has purchased services in excess of \$5,000 directly from outside the State of New York.

3. I find Writers Guild of America, East, Inc., AFL-CIO, and Writers Guild of America, West, Inc. (hereinafter referred to as the Union or Petitioner) are labor organizations within the meaning of Section 2(5) of the Act.

4. The Petitioner proposes to clarify the existing bargaining unit by adding all full-time, part-time and per diem producers whether classified as senior producers, associate producers, assistant producers or assignment editors and all full-time, part-time, and per diem designers, including the art director, employed at the website CBSNews.com at 524/514 West 57th Street, New York City, New York and at the website CBSnewyork.com at 524 West 57th Street, New York City, New York. The Employer opposes the clarification of the existing bargaining unit on several grounds, including: the petition was untimely, the existing CBA language precludes it and the proposed additional employees lack an overwhelming community of interest with the existing unit employees. As I have found that the Petitioner failed to reserve the right to file a unit clarification petition, only the first of these grounds, the timeliness of the petition, will be considered herein.

The Employer and the Petitioner have a longstanding collective bargaining relationship, which began in 1941. The current collective bargaining agreement (CBA) is for the period of April 2, 1999 through April 1, 2002, and was executed on June 3, 1999. The instant petition was initially filed on June 29, 1999. The collective bargaining unit consists of staff promotion writers/producers employed by the Employer in New York or Los Angeles; staff newswriters employed in New York, Chicago or Los Angeles for network, regional and/or local AM or FM radio and/or television broadcasts; staff news assignment deskpersons and writers employed at its Washington, D.C. network

news bureau; staff news editors, radio and television news staff desk assistants, network staff researchers and local researchers, and staff graphic artists employed in New York; and staff desk assistants and clerk-typists employed in Chicago. There are 12 supplemental agreements, which define each of the job positions.

The approximate number in the current bargaining unit is 400 employees. The approximate number of the proposed additional employees is 22 at CBSNews.com⁴ and 4 at CBSnewyork.com.

The Employer asserts that the Petitioner tried and failed during negotiations to include specific language in the CBA to cover Internet newswriters and failed to reserve this language for a unit clarification petition. In the 1999 negotiations, the Union proposed several additional contract clauses. Specifically:

"This Agreement applies and is limited in its application to... all personnel whose responsibilities include work related to the Internet and/or websites..."

"All writing or graphics on or for transmittal on-line and/or for video imaging will be performed by bargaining unit employees." ⁵

"The Company agrees that it is the right of non-Guild CBS employees to seek representation by the Guild and, toward that end will provide a neutral environment, free of company interference, in which its employees can exercise their rights to collective bargaining. The company further agrees to the mechanism known as "card-check" for determining whether a majority of non-Guild employees, in an appropriately designated bargaining unit, desire union representation. If a majority seek representation, the company agrees to negotiate with the WGA an appropriate supplement, including wages, to this existing contract."

In proposing the addition of these employees and language, the Union's notes reflect the following dialogue on March 10, 1999 between CBS representative, Leon Schulzinger, and Union Representative, Mona Mangan:

Mangan -- "(Internet employees) want to be organized, do analogous work."

⁴ Initially, when the hearing began in June 2000, there were 40 employees working at CBSNews.com.

Schulzinger -- "The WGA had rights and that the Internet employees had rights. The Internet employees had a different set of economic realities than those people currently covered by the collective bargaining group."

Mangan -- "A majority (of the Internet employees) would sign (cards). The company ought to agree to a card check instead of an obnoxious, belabored NLRB fight. This is the way to go and it's a decent way to do it."

Schulzinger -- "There was a legal procedure that gave rights to the company as well."

Mangan -- "Well, you'll fight?"

Gershner⁶ -- "We'll fight tooth and nail. You'll make promises, we'll show our side and we'll have an election."

In April 1999, the Employer made a final offer to the Union, which did not include the Union's language related to Internet writing and graphics. Ultimately, the Union accepted the Employer's final offer, which did not include adding the Internet newswriters and graphic artists to the unit. Esakoff, one of the Union's negotiators at the 1999 bargaining, testified at the hearing that the inclusion of the Internet newswriters was not on the "table" upon the Union acceptance of the Employer's final offer. Despite this testimony, the Union asserts that by accepting the Employer's final offer that it did not withdraw its proposals on Internet writing and graphics.

The 1999 CBA, as well as the 1996 CBA, included the following clause:

It is agreed that the scope of this Agreement is without prejudice to any claim which may hereafter be asserted by the Union or by the Company that the

⁵ In the 1996 negotiations, the Union unsuccessfully sought the language, "All writing or graphics on or for transmittal on-line and/or for video imaging will be performed by bargaining unit employees" in the CBA.

⁶ Mr. Gershner was the vice-president of industrial relations.

bargaining unit be wider in scope or larger in extent, but no such claim shall affect the validity of this Agreement.

Neither party presented any evidence or testimony about the circumstances, which led to the inclusion of this clause in the CBA, nor of the parties' intent.

Despite the Union's failure to present any testimony or evidence concerning the intent of this clause, the Union, contrary to the Employer, asserts this language acts as a reservation of their ability to file a unit clarification petition. The Union did not provide any caselaw in support of this proposition.

ANALYSIS:

The Board in **Edison Sault Electric Co.**, 313 NLRB 753 (1994), and **Wallace-Murray Corp.**, 192 NLRB 1090 (1971), stated it will generally decline to clarify a bargaining unit midway in the term of an existing collective bargaining contract unless the union reserves its position to file a unit clarification petition during negotiations. In those situations where the parties cannot agree on a disputed classification but do not wish to press the issue at the expense of reaching an agreement, the Board will allow a unit clarification petition to be filed shortly after the contract is executed. **Massey-Ferguson**, 202 NLRB 193 (1973) (after the Union unsuccessfully tried to obtain the employer's agreement for the inclusion of the disputed employees, the Union stated "It would handle the matters through legal channels after negotiations had been completed"). In order to reserve the right to file a unit clarification petition after negotiations for a contract, a party must inform the other party verbally or in writing that it plans to pursue unit clarification through a Board-filed petition. **Baltimore Sun Co.**, 296 NLRB 1023, 1023-24 (1989) (after the Employer proposed the exclusion of several positions, it stated "If we are not able to negotiate these exclusions we are going to the

Board... to file a unit clarification petition"); **St. Francis Hospital**, 282 NLRB 950, 950-51 (1987), enfd. 729 F. 2d 844 (D.C. Cir. 1984) (the union wrote a letter stating "Our agreement to the wording of the NLRB certification in no way should be interpreted as an agreement to any hospital position that those employees are excluded from the unit").

The Petitioner's assertion that it reserved the issue of the Internet newswriters, by the contractual language that either party may seek a wider scope in the bargaining unit regardless of the CBA, is unfounded. The existing contractual language is insufficient to constitute a specific reservation of the right or intent to file a unit clarification petition. This contractual language had been in at least one prior CBA and at no time during the 1999 negotiations did the Union refer to this language in support of its intent to file a unit clarification petition after the parties reached a CBA. As shown above, the Board is only willing to find a reservation when the party has specifically done so in negotiations. Furthermore, Mangan's statement that the Employer ought to recognize the Union in the disputed Internet positions, after a card check, in order to "avoid an obnoxious, belabored NLRB fight" is, at best, given the card check remark, more open to interpretation as a reference to an election, not a reference to the filing of a UC petition.

For the above reasons, I find the Petitioner did not reserve the filing of a unit clarification petition concerning the disputed CBSNews.com positions, after the parties reached agreement on a CBA.

ORDER

IT IS HEREBY ORDERED that the unit clarification petition be, and it hereby is dismissed.

DATED this 15th day of March 2002 at Memphis, Tennessee.

/S/

Ronald K. Hooks, Director, Region 26
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